

## § 28.13

## 28 CFR Ch. I (7–1–14 Edition)

by the Attorney General, the collection of DNA samples under this paragraph may be limited to individuals from whom the agency collects fingerprints and may be subject to other limitations or exceptions approved by the Attorney General. The DNA-sample collection requirements for the Department of Homeland Security in relation to non-arrestees do not include, except to the extent provided by the Secretary of Homeland Security, collecting DNA samples from:

(1) Aliens lawfully in, or being processed for lawful admission to, the United States;

(2) Aliens held at a port of entry during consideration of admissibility and not subject to further detention or proceedings;

(3) Aliens held in connection with maritime interdiction; or

(4) Other aliens with respect to whom the Secretary of Homeland Security, in consultation with the Attorney General, determines that the collection of DNA samples is not feasible because of operational exigencies or resource limitations.

(c) The DNA-sample collection requirements under this section shall be implemented by each agency by January 9, 2009.

(d) Each individual described in paragraph (a) or (b) of this section shall cooperate in the collection of a DNA sample from that individual. Agencies required to collect DNA samples under this section may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) or (b) of this section who refuses to cooperate in the collection of the sample.

(e) Agencies required to collect DNA samples under this section may enter into agreements with other agencies described in paragraph (a) or (b) of this section, with units of state or local governments, and with private entities to carry out the collection of DNA samples. An agency may, but need not, collect a DNA sample from an individual if—

(1) Another agency or entity has collected, or will collect, a DNA sample from that individual pursuant to an agreement under this paragraph;

(2) The Combined DNA Index System already contains a DNA analysis with respect to that individual; or

(3) Waiver of DNA-sample collection in favor of collection by another agency is authorized by 42 U.S.C. 14135a(a)(3) or 10 U.S.C. 1565(a)(2).

(f) Each agency required to collect DNA samples under this section shall—

(1) Carry out DNA-sample collection utilizing sample-collection kits provided or other means authorized by the Attorney General, including approved methods of blood draws or buccal swabs;

(2) Furnish each DNA sample collected under this section to the Federal Bureau of Investigation, or to another agency or entity as authorized by the Attorney General, for purposes of analysis and entry of the results of the analysis into the Combined DNA Index System; and

(3) Repeat DNA-sample collection from an individual who remains or becomes again subject to the agency's jurisdiction or control if informed that a sample collected from the individual does not satisfy the requirements for analysis or for entry of the results of the analysis into the Combined DNA Index System.

(g) The authorization of DNA-sample collection by this section pursuant to Public Law 106-546 does not limit DNA-sample collection by any agency pursuant to any other authority.

[AG Order 3023-2008, 73 FR 74942, Dec. 10, 2008]

### § 28.13 Analysis and indexing of DNA samples.

(a) The Federal Bureau of Investigation shall carry out a DNA analysis on each DNA sample furnished to the Federal Bureau of Investigation pursuant to section 3(b) or 4(b) of Public Law 106-54, and shall include the results in the Combined DNA Index System.

(b) The Federal Bureau of Investigation shall include in the Combined DNA Index System the results of each analysis furnished to the Federal Bureau of Investigation pursuant to 10 U.S.C. 1565(b)(2).